REMARKS

Claims

Upon entry of this Response, claims 1-4, 6-8, 10-12, and 14-16 remain pending in the application with claims 1 and 10 being independent. Claims 5, 9, 13 and 17 have been previously canceled. No claims have been added or amended. Reconsideration is respectfully requested.

Obviousness-type Double Patenting

Claims 1, 3, 4, 6-8, 10, 12, and 14-16 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 5, 6, 8, 10, 11, 13, 15, 16, and 19 of co-pending Application Serial No. 10/263,172 (Smith et al.) in view of the admitted state of the prior art. Although a Terminal Disclaimer has not been submitted in conjunction with the present Response, Applicants will consider such a Terminal Disclaimer in the future upon an indication of allowable subject matter by the Examiner.

Claim Rejections – 35 U.S.C. §102(e)

Claims 1-4, 6, 7, 10-12, 14 and 15 stand rejected under 35 U.S.C. §102(e) as being anticipated by Fuller et al. (U.S. Patent No. 6,743,468). Claims 1, 3, 4, 6, 7, 10, 12, 14, and 15 stand rejected under 35 U.S.C. §102(e) as being anticipated by Smith et al. (U.S. Pub. No. 2004/0065432) and are also provisionally rejected under 35 U.S.C. §102(e) as being anticipated by Smith et al. (co-pending Application Serial No. 10/263,172). Applicants respectfully submit that the subject matter in Fuller et al. and Smith et al., which is relied upon by the Examiner to reject the subject application is actually the work of the inventors of the subject application. As a result, Applicants submit the attached 37 CFR §1.132 Declarations in compliance with MPEP 2136.05 to remove Fuller et al. and Smith et al. as prior art. Applicants also submit that this subject matter is not being claimed by Fuller et al. or Smith et al. in compliance with MPEP 2136.05 and 37 CFR §1.132.

Applicants previously submitted similar §1.132 Declarations on September 22, 2006. In response to receiving these prior Declarations, the Examiner refused their entry. In particular, the Examiner stated on page 14 of the Office Action mailed November 3, 2006 that the "declarations were not sufficient to overcome the rejection because the material in Fuller et al. was also claimed, as shown by the newly provided double patenting rejection."

Applicants' representative Trent K. English and Examiner Katherine A. Bareford discussed the non-entry of these §1.132 Declarations in a teleconference on August 22, 2007. Applicants' thank the Examiner for the courtesy extended to them in the teleconference. In particular, Mr. English and Examiner Bareford discussed the requirement that the subject matter declared as being Applicants' own work cannot be claimed by the asserted references. It was agreed between Mr. English and Examiner Bareford that the mere fact that an obviousness-type double patenting rejection based on the asserted references may also be proper does not preclude a finding that the subject matter declared as being Applicants' own work is "unclaimed" by the asserted references. Even if the asserted reference claims a method or apparatus utilizing the principles claimed in the subject application, it does not imply that the asserted reference is indeed claiming the same subject matter.

The subject matter that Applicants' declare is their own work relates to the subject matter claimed in the subject application. For instance, Applicants' declare in the attached §1.132 Declarations that the subject matter of the claims is Applicants' own work. The subject matter claimed in the subject application is different than the subject matter claimed in Fuller et al and Smith et al. For instance, independent claim 1 of the subject application requires: (1) providing a kinetically sprayed surface having a thickness of at least 5 millimeters with a defect in the surface caused by the kinetic spraying; and (2) applying a repair coating to the defect by thermally spraying a molten material on the defect by a thermal spray process thereby filling and repairing the defect. Conversely, the subject matter of independent claim 1 of Fuller et al. (only independent claim) pertains to a method of coating a substrate that comprises providing a supersonic nozzle used for *both* kinetically spraying and thermally spraying particles onto a substrate. While this claimed subject matter builds on the idea of using a thermally sprayed coating to repair defects in a kinetically sprayed surface, the claimed subject matter of Fuller et al. is distinct from that broad concept.

Fuller et al. does not attempt to claim Applicants' own work, i.e., the broad concept of repairing a defective kinetically sprayed surface having a thickness of at least 5 millimeters by thermally spraying a molten material on the defect. Similarly, no claim in the subject application recites the use of a supersonic nozzle used for *both* kinetically spraying and thermally spraying particles onto a substrate. Thus, the claimed subject matter of the subject application and Fuller et al. is different.

Likewise, Smith et al. currently claims in independent claim 1 (only independent claim currently pending based on Appeal Brief filed May 31, 2007) a method for formation of a thermal stack component that comprises: (1) providing a heat sink material; (2) applying a layer of alumina to the heat sink material; and (3) applying a layer of solderable material onto the layer of alumina. Like Fuller et al., the claimed subject matter of Smith et al. is distinct from the broad concept set forth in independent claim 1 of the subject application. Also like Fuller et al., Smith et al. does not attempt to claim Applicants' own work and the claims of the subject application do not recite methods for formation of a thermal stack component. Thus, the claimed subject matter of the subject application and Smith et al. is different.

In summary, since Fuller et al. and Smith et al. do not "claim the subject matter" considered to be Applicants' own work, i.e., conceived of by the inventors of the subject patent application prior to the effective filing dates of Fuller et al. and Smith et al., Applicants' believe the 37 CFR §1.132 Declarations are sufficient to overcome the rejections above based on Fuller et al. and Smith et al.

For the reasons set forth above, Applicants respectfully submit that independent claims 1 and 10 are in condition for allowance. Applicants also submit that dependent claims 2-4, 6-8, 11, 12, and 14-16 are in condition for allowance based on their own merits and their dependency to independent claims 1 and 10.

Claim Rejections – 35 U.S.C. §103(a)

Claims 8 and 16 stand rejected under 35 U.S.C. §103(a) as being unpatentable or provisionally unpatentable over Smith et al. In view of the attached 37 CFR §1.132 Declarations and the remarks set forth above, these rejections are now moot.

Applicant believes the application is now in condition for allowance, which allowance is respectfully solicited. Applicant believes that no additional fees are required. However, the Commissioner is authorized to charge our Deposit Account No. 08-2789 for any additional fees or credit the account for any overpayment.

Respectfully submitted,

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Date

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